

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
HEINS RODRIGUEZ,

5 PLAINTIFF,

6 -against-

Case No.:
16-CV-5861
(NG) (RER)

8 CITY OF NEW YORK; Police Officer ZHENG
9 ZUOPENG, Shield No. 25461; Police Officer
10 ALEN CHEN, SHIELD NO. 28461; Sergeant
11 MATTHEW S. STARRANTINO; and JOHN and JANE
12 DOE 1 through 10, individually and in their
official capacities (the names John and
Jane Doe being fictitious, as the true
names are presently unknown),

13 DEFENDANTS.

14 -----X

15 DATE: July 25, 2018

16 TIME: 11:24 A.M.

17
18
19 (DEPOSITION OF ZUOPENG ZHENG)
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21
22
23
24
25

1 Z. ZHENG

2 done that?

3 A. Not at the trial, no.

4 Q. And so I think what I'm -- what
5 I think you're saying, have you testified
6 under oath in a deposition before?

7 A. Yes.

8 Q. Okay. Um, on how many
9 occasions?

10 A. One.

11 Q. Okay. So aside from this one
12 one other time?

13 A. One more.

14 Q. What were the circumstances?

15 A. Um, it was an RMP accident
16 involve a pedestrian.

17 Q. Okay. And um, was that a
18 lawsuit that was pending?

19 A. Yes.

20 Q. Okay. And were you testifying
21 as a witness?

22 A. Sorry what does -- sorry
23 pending.

24 MR. BERGMAN: Yeah, I'm going
25 to object to the last question but

1 Z. ZHENG

2 you can answer.

3 MR. FETT: That's okay.

4 Q. So when you were testifying at
5 a deposition was there a lawsuit that you
6 were testifying about?

7 A. Yes.

8 Q. Okay and were you testifying,
9 as far as you know, were you a witness,
10 were you a Defendant or something else?

11 A. Defendant.

12 Q. Um, and, what was the name of
13 the Plaintiff in the case, the person
14 suing?

15 A. I don't remember.

16 Q. Okay. And what was that person
17 claiming in that lawsuit?

18 A. That I struck her with a
19 vehicle.

20 Q. Okay. Do you know
21 approximately when that person claimed you
22 had struck him or her with a vehicle?

23 MR. BERGMAN: Objection. You
24 can answer.

25 A. I don't remember exactly when.

1 Z. ZHENG

2 Q. Okay. Was it in 2015?

3 MR. BERGMAN: Same objection.

4 You can answer.

5 A. The accident happened in 2014.

6 Q. Okay. 2014. Do you remember
7 the month in 2014?

8 A. No.

9 Q. And, so, can you describe the
10 circumstances of what happened in that
11 accident?

12 A. I was doing an intake crime
13 unit at the time which was a plainclothes
14 unit --

15 Q. Ah-huh.

16 A. -- I was driving an unmarked
17 vehicle and, um, in the middle of a block
18 one of my sergeant's was sitting in the
19 back seat telling me there was a person in
20 the backyard which was -- we were looking
21 for a burglary at the time.

22 I backup my vehicle slowly,
23 that person came out in between cars in the
24 middle of the street so my back of my car
25 tapped his leg and as soon as we stopped

1 Z. ZHENG

2 the car we asked him if he was all right,
3 he said "I'm fine" and he was about to walk
4 away. We call him back. We took the
5 accident report.

6 Q. You. You wrote an accident
7 report?

8 A. We wrote an accident.

9 Q. Okay. And why did you do that?

10 A. It's just the procedure. We
11 have to do it if someone got -- even though
12 there was no injury at the time we still
13 have to require to do something for the
14 incident.

15 Q. Okay. And, um, was an
16 ambulance called to the scene?

17 A. No.

18 Q. Why not?

19 A. He didn't require an ambulance.

20 Q. How do you know he didn't
21 require an ambulance?

22 A. We was going to walk away
23 before we even started a report.

24 Q. Where did this accident happen?

25 A. Somewhere in my precinct. I --

1 Z. ZHENG

2 Capability of department of vehicle. F.

3 Familiar with the area.

4 Q. Okay. And um, so talking about
5 um, and I'm going to apply this to the
6 pursuit of Mr. Rodriguez even though I
7 understand he was on a bicycle, okay?

8 A. Okay.

9 Q. Um, so let me ask you this,
10 would it matter to you if you were -- I may
11 have already talked about this. If you
12 were pursuing someone on a bicycle whether
13 they committed a violation or a felony,
14 does that matter to you in terms of how you
15 would pursue them?

16 MR. BERGMAN: Objection. You
17 can answer.

18 A. No.

19 Q. Can you expand on that. What
20 do you mean by that?

21 A. I'll pursue the same way.

22 Q. Okay. So it doesn't matter
23 what the offense is?

24 A. No.

25 Q. Okay. Um -- okay. I

1 Z. ZHENG

2 assignment that you prefer?

3 A. At the time I requested it,
4 yes.

5 Q. How come?

6 A. Better schedule, better time
7 for the family.

8 Q. Okay. Um, so did you have a
9 partner on August 13, 2015?

10 A. Yes.

11 Q. Okay. Who was your partner?

12 A. Officer Chen.

13 Q. Okay. And, who was your
14 supervisor that day?

15 A. Um, Sergeant Shaffer
16 (phonetic).

17 Q. Okay. So what was your
18 specific assignment aside from patrol; um,
19 were you bike initiative or something else?

20 A. It was a bike initiative that
21 day.

22 Q. What is that?

23 A. Um, basically writing, moving
24 violations to some -- all the bicycles who
25 was doing moving violations.

1 Z. ZHENG

2 Q. Okay?

3 A. Such as going the wrong way,
4 one-way street, stop signs, red lights,
5 etcetera.

6 Q. Okay. Um, and were you on foot
7 or in a vehicle?

8 A. In the car.

9 Q. Was it marked or unmarked?

10 A. Unmarked.

11 Q. And, were you the driver or the
12 passenger?

13 A. Driver.

14 Q. Okay. And, um, was anyone else
15 in your vehicle aside from you and Officer
16 Chen?

17 A. No.

18 Q. How did he determine who would
19 be the driver that day?

20 A. It was no determination. I
21 just started driving.

22 Q. Okay. Would there ever be
23 times when Officer Chen might be the
24 driver?

25 MR. BERGMAN: Objection. You

1 Z. ZHENG

2 Q. Okay.

3 A. And one lane of the travel.

4 Q. Okay. And I'm sorry, which
5 direction is that one lane of travel?

6 A. Southbound only.

7 Q. South -- okay. And you said
8 you're three or four car lengths away from
9 the intersection; is that right?

10 A. Yes.

11 Q. Okay. And what's at the
12 intersection; is it a stop sign, is it a
13 street light or something else?

14 A. It's a traffic light.

15 Q. A traffic light. Okay. And
16 describe for me the conditions of 104th
17 that day?

18 MR. BERGMAN: Objection. You
19 can answer.

20 A. What kind of condition are we
21 talking about?

22 Q. Was it under construction or
23 anything like that?

24 A. No.

25 Q. Okay. What were the weather

1 Z. ZHENG

2 conditions that day?

3 A. Clear.

4 Q. And, approximately what time of
5 day was it that you were stopping this
6 other individual?

7 A. Um, I don't remember exactly
8 time.

9 Q. Okay.

10 A. Sometime about 4, 5:00 in the
11 afternoon.

12 Q. Okay. Did you say sometime
13 before 5:00 in the afternoon?

14 A. Sometime between 4 and 5.

15 Q. Okay. Was that the first
16 person you had stopped that day?

17 A. No.

18 Q. So, before you stopped this
19 person that we're talking about right now,
20 approximately, how many other stops had you
21 made that day?

22 A. I don't remember exactly the
23 number.

24 Q. Had you issued any tickets that
25 day?

1 Z. ZHENG

2 Q. South or north?

3 A. No, one way goes south.

4 Q. South?

5 A. Correct.

6 Q. So, you have a person standing
7 by your car that you're ticketing and then
8 you also have another cyclist that's now
9 stopped because Officer Chen told him to
10 stop; is that right?

11 A. Yes.

12 Q. And the cyclist that Officer
13 Chen told to stop, is he a male or female?

14 A. Male.

15 Q. Black, white, Hispanic, Asian?

16 A. That I don't remember.

17 Q. Okay. Um, and how did you get
18 inside your car? Because I think last we
19 talked you were out writing a summons. So,
20 describe for me how you got back in your
21 car.

22 A. I don't think I ever said I was
23 writing a summons outside the car.

24 Q. Okay. So then let me just
25 review it again. So, you give this guy a

1 Z. ZHENG

2 summons. Describe for me how you're doing
3 that. What are you doing.

4 A. I stop him --

5 Q. Okay.

6 A. Step out the car ask for ID.

7 Q. Okay.

8 A. And go sit back in my car to
9 write a summons.

10 Q. So, he's basically standing
11 next to the driver's side of the car with
12 his bike waiting for you?

13 A. Correct.

14 Q. Okay. And, approximately how
15 far is he from the driver's side?

16 A. A few feets (sic) away.

17 Q. Okay. And, this is the
18 Hispanic gentleman?

19 A. Yes.

20 Q. Okay. And, does Officer Chen
21 say anything to you before he gets out of
22 the car and tells the other bicyclist to
23 stop?

24 A. No.

25 Q. Um, and what did Officer Chen

1 Z. ZHENG

2 moment?

3 A. From what I understand at that
4 point that when he passed by the
5 intersection I did observe the traffic
6 light was red --

7 Q. Okay.

8 A. -- and also he was going
9 against the traffic.

10 Q. Okay.

11 A. So, that's the two violations
12 that he committed at -- we was supposed to
13 write a summons to.

14 Q. Okay. Um, and did you actually
15 observe him go through a red light?

16 A. Yes.

17 Q. Okay. And, you actually
18 observed him going down 104 against
19 traffic?

20 A. Yes.

21 Q. Okay. And um, when he made the
22 U-turn in front of your vehicle what did
23 you think was going on?

24 A. He was running away.

25 Q. Okay. And um, what happened

1 Z. ZHENG

2 next?

3 A. Officer Chen jumped in my car
4 and we both start um, pursuing him.

5 Q. Okay. What happened to the
6 Hispanic individual that you were in the
7 middle of issuing a summons for?

8 A. I still had his ID at the time
9 and I told him I'll be right back.

10 Q. Okay. And um -- and what did
11 he say, if anything?

12 A. Nothing.

13 Q. Okay. What about the
14 individual that was in front of your car
15 that Officer Chen had told to stop that
16 stopped?

17 A. We have no idea.

18 Q. Okay. You don't know where he
19 went?

20 A. No.

21 Q. Okay. When officer Chen got
22 back in the car did he say anything to you?

23 A. No, I don't remember. I don't
24 remember, no.

25 Q. Okay. And um, was Mr.

1 Z. ZHENG

2 gets out of the passenger side he's
3 actually coming out into the street,
4 correct?

5 A. Correct.

6 Q. And um, and so after Mr.
7 Rodriguez makes the U-turn and then he
8 turns left on 43rd; that's right?

9 A. Yes. That's it. Right.

10 Q. Okay. And what direction is he
11 traveling at that point on 43rd?

12 A. Westbound.

13 Q. Okay. And describe for me that
14 street; is it a one-way street, a two-way
15 street?

16 A. It's a -- a -- a two-way street
17 going east and west. A parking lane on
18 each side, south and north.

19 Q. Okay. Um, so he's traveling
20 west on 43rd Avenue?

21 A. Yes.

22 Q. Okay. And, describe for me
23 what happens next. Officer Chen gets in
24 the car and what happens?

25 A. We started going after him.

1 Z. ZHENG

2 Q. Okay. Um, did you go over the
3 radio?

4 A. I don't remember.

5 Q. Okay. Um, and, and when you
6 say you started going after him did you
7 have to -- when you made the left onto 43rd
8 Avenue was there a light there, did you
9 have to go through traffic, what happened?

10 A. I already turned my lights and
11 sirens on. I don't remember the lights
12 situation.

13 Q. Okay. Um so, what happened
14 next?

15 A. We pursued him about one block
16 from -- it's a long block. From -- it's a
17 long block. From 102 Street -- from 104
18 Street all the way to 102st. Almost
19 approximately, 102 Street and um, he hit a
20 parked car and fell off the bike.

21 Q. Okay. Um so, how fast were you
22 traveling when you were pursuing him?

23 A. I have no idea.

24 Q. Okay. Was it more than 10
25 miles an hour?

1 Z. ZHENG

2 A. Yes.

3 Q. Okay. More than 15 miles an
4 hour?

5 A. Approximately.

6 Q. Okay. Um, more than 20 miles
7 an hour?

8 A. Not -- not sure.

9 Q. Okay. Um, and I just want to
10 make sure I understand. Between 104 and
11 102, um, that's one block, right?

12 A. Yes.

13 Q. Okay. So there's no 103 in
14 that block, right?

15 A. No.

16 Q. Okay. Um, and, you said you
17 had lights and sirens on?

18 A. Yes.

19 Q. Okay. And, were you and
20 Officer Chen having any communication as
21 you were pursuing him?

22 A. I don't remember, no.

23 Q. Okay. And, if you had to
24 estimate, approximately, how long do you
25 think you were pursuing him on 43rd Avenue

1 Z. ZHENG

2 before Mr. Rodriguez fell off his bike?

3 A. Approximately, less than 30
4 seconds.

5 Q. Okay. And as you were pursuing
6 him on 43rd Avenue did you at any point see
7 whether or not he had earphones or
8 headphones in?

9 A. No.

10 Q. Okay. Um, when you first
11 turned right onto 43rd Avenue did you ever
12 loose site of Mr. Rodriguez?

13 MR. BERGMAN: Objection. You
14 can answer.

15 A. No.

16 Q. Okay. Describe for me how far
17 away Mr. Rodriguez was as you were pursuing
18 him on 43rd Avenue from your vehicle?

19 A. At first it was few car lengths
20 away --

21 Q. Okay.

22 A. -- and by the time he fell off
23 the bike I'm approximately a foot away from
24 -- on his left side.

25 Q. Okay. Um, and, when you were a

1 Z. ZHENG

2 foot away from him, are you behind him, are
3 you next to him, where are you in
4 connection with his bike?

5 MR. BERGMAN: Objection. You
6 can answer.

7 A. I'm just catching up to him.
8 So, alongside.

9 Q. Okay. And, um, why did you
10 drive alongside of Mr. Rodriguez' bike?

11 A. Try to get his attention stop.

12 Q. Okay. Um, did Mr. Rodriguez as
13 you were pursuing him down 43rd Avenue, did
14 you ever see him turn around as he was
15 biking to look at you?

16 A. I don't remember.

17 Q. Okay. Um, did you believe that
18 Mr. Rodriguez knew thought that you were
19 pursuing him behind him?

20 A. Yes. Absolutely.

21 Q. Why do you think that?

22 A. He saw us. Lights and sirens
23 were pretty loud.

24 Q. He saw you with the lights and
25 sirens.

1 Z. ZHENG

2 Q. On the right-hand side of your
3 vehicle?

4 A. No -- my vehicle, also the
5 right-hand side of the bicycle. Right-hand
6 bar.

7 Q. Okay.

8 A. Right. Second thing is, I
9 never observed him when he -- when I say
10 the -- when he run the red light and then
11 when he crossed the street from south side
12 of 104th Street coming to north side of
13 104th Street my point of view of the light
14 was red.

15 Q. Okay.

16 A. So that's how I think he was
17 running the red light at that time.

18 Q. Okay.

19 A. All right. The third thing is
20 that I just remember there was one more
21 accident that happened on personal time.

22 Q. Okay.

23 A. It wasn't on the job time.
24 Sometime around 2012, 2013 the accident
25 happened somewhere at 138th Street and 68th

1 Z. ZHENG

2 Avenue, 68th Drive. I'm sorry. 68th
3 Drive. Um, I was driving down the block
4 and about to park a young girl actually ran
5 out between two cars hit the side of my
6 car.

7 Q. Okay.

8 A. And that's another accident I
9 remember.

10 Q. Okay. Thank you. Um, so let
11 me just go back a lit bit and ask you about
12 that accident with the little girl.

13 A. Ah-huh.

14 Q. So, and that's in Queens?

15 A. Queens, yes.

16 Q. And you said it was
17 approximately 2012 or 2013?

18 A. I don't remember exactly what
19 year. It literally just hit me while I was
20 eating lunch, actually.

21 Q. Okay and this was off duty?

22 A. Off duty.

23 Q. Okay and um, you said you were
24 eating lunch, is your car moving or you're
25 parked?

1 Z. ZHENG

2 the time, no. It wasn't like I had enough
3 time to organize this thing to how it --
4 this literally happened 30 seconds, less
5 than minute so I didn't have a plan.

6 Q. How about um, once you turned
7 onto 43rd Avenue and now you're pursuing
8 him, um, did you have a plan at that point?

9 A. All I hoped was I get his
10 attention and he would stop.

11 Q. Okay. And, how did you think
12 you would get his attention?

13 A. Lights and sirens and tell him
14 to stop.

15 Q. Okay. And I think you said
16 your lights and sirens were on the whole
17 time; is that right?

18 A. Yes.

19 Q. Okay. And he wasn't stopping?

20 A. No.

21 Q. Okay. So, at that point um, I
22 think you said you had got one to two feet
23 uh, from his bike?

24 A. Alongside of him, yes.

25 Q. Alongside of him. So, what was

1 Z. ZHENG

2 your plan at that point?

3 A. Tell him to stop hopefully.

4 Q. How would you tell him that?

5 A. My partner can scream out a
6 window if he has to.

7 Q. Okay. And, were your windows
8 up or down --

9 A. Down.

10 Q. -- as you were pursuing?

11 A. Yes.

12 Q. Down?

13 A. Down.

14 Q. Okay. And, did your partner at
15 any point when you were alongside the
16 bicycle yell out of the car?

17 A. I don't remember.

18 Q. Okay. Um, did your partner
19 ever say, hey you're getting too close or
20 watch out or anything like that?

21 A. No.

22 Q. Okay. Did you ever see your
23 partner um, uh, make any kind of signal or
24 wave his hand for Mr. Rodriguez to stop?

25 A. I don't remember.

1 Z. ZHENG

2 Q. Okay. So, but if you're seeing
3 him fall off the bike um, you're not
4 looking straight ahead, right, because the
5 bike is next to you, is that fair to say?

6 A. I don't remember where I was
7 looking.

8 Q. Okay. But you observed him
9 fall off the bike?

10 A. Correct.

11 Q. So, you were looking at him?

12 A. Yes.

13 Q. Okay. And so, if the bike is
14 next to you is it fair to say you were
15 looking to your right as he fell off?

16 A. Yes.

17 Q. Okay. Um and, was there any
18 conversation of anything said by your
19 partner at this point?

20 A. No.

21 Q. Okay. Um, when you got out of
22 your vehicle um, and you first were
23 encountering Mr. Rodriguez, did you ever
24 say something like, what happened?

25 A. I don't want to guess. I don't

1 Z. ZHENG

2 remember exactly what I said.

3 Q. Okay. Um, but would that have
4 been something where you wanted to know why
5 you fell off your bike?

6 MR. BERGMAN: Objection. You
7 can answer.

8 A. My ques -- my -- I'm not, you
9 know, uh, not what I said at that time. My
10 only question should be, why you run away.

11 Q. But you don't remember for sure
12 whether you said that?

13 A. No.

14 Q. Um, and I think you said that
15 Mr. Rodriguez never said at the scene that
16 you had struck him?

17 MR. BERGMAN: Objection. You
18 can answer.

19 A. I don't remember him saying
20 that.

21 Q. Okay. Um, but you do remember
22 him saying that once you're back at the
23 precinct?

24 A. In front of the desk, yes.

25 Q. Okay. Um, did you think that

1 Z. ZHENG

2 gathering uh, for cars to top in the
3 opposite direction, in my direction.
4 Basically, that's how I consisted with the
5 disorderly conduct charge.

6 Q. Okay. So because he fell off a
7 bike and struck a car and fell to the
8 ground um, he created a scene?

9 MR. BERGMAN: Objection. You
10 can answer.

11 A. Yes.

12 Q. Okay. And, you think he
13 stopped traffic?

14 A. He slowed down traffic for
15 people to -- stopping to look what
16 happened.

17 Q. Okay. How about you pulling up
18 alongside of his bicycle were you in anyway
19 obstructing traffic?

20 A. I don't know.

21 Q. Okay. Now, if you go to the
22 next page of this document. I'm sorry
23 let's go to the third page of this
24 document.

25 A. Okay.